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No. 679

In the Supreme Court of the United States

OCTOBER TERM, 1957

ARNOLD H. RIPPERGER, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The *per curiam* opinion of the Court of Appeals (Pet. 43-45) is reported at 248 F. 2d 944.

JURISDICTION

The judgment of the Court of Appeals was entered on October 21, 1957 (Pet. 43), and on November 20, 1957, the Chief Justice extended the time within which to file a petition for a writ of certiorari to December 20, 1957. The petition was filed on the latter date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether the cancellation of a conference scheduled with petitioner by the Intelligence Division of the Internal Revenue Service was a denial of due process of law.

2. Whether the evidence was sufficient to establish that petitioner's failure to file income tax returns was willful.

STATUTES INVOLVED

Internal Revenue Code of 1939:

> SEC. 145. PENALTIES.
>
> (a) *Failure to file returns, submit information, or pay tax.*—Any person required under this chapter to pay any estimated tax or tax, or required by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who willfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.
>
> * * * *
>
> (26 U.S.C. 145(a).)

Internal Revenue Code of 1954:

> SEC. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.
>
> Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. (26 U.S.C. Supp. IV, 7203.)

STATEMENT

On November 9, 1956, petitioner was charged in an information filed in the United States District Court for the District of Maryland, with the willful failure to file his individual income tax returns for the years 1953 and 1954, in violation of Section 145 (a) of the Internal Revenue Code of 1939 and Section 7203 of the Internal Revenue Code of 1954. The case was tried to the court without a jury. Petitioner was found guilty on both counts and was sentenced to three months imprisonment. (R. 35, 39.)[1] The evi-

[1] The appendix to petitioner's brief in the Court of Appeals is designated "R".

dence to support the verdict may be summarized briefly as follows:

Petitioner was admitted to the Maryland bar in 1941 and has been practicing law since 1946 (R. 19, 43, 44). Although petitioner had prepared income tax returns for a number of his clients (R. 19, 46), he ceased filing his own returns after 1948 (R. 45). He filed no returns for the years 1949 through 1954, although he had sufficient income in each of those years to require the filing of a return (R. 6, 20, 24, 45). Moreover, he filed no declarations of estimated tax (R. 32, 45). In the prosecution years petitioner had unreported income (consisting mainly of professional fees) and tax liability as follows (R. 6, 9, 11):

Year	Income	Tax Liability
1953	$6,694.19	$932.92
1954	7,175.31	862.48

Shortly before the trial petitioner (although he still filed no returns) paid his back taxes, exclusive of interest and penalties, totalling some $1,700 (R. 24).

Petitioner testified at the trial that the reason he had not filed returns was that at the time they were due he did not have the money to pay the tax and was under the impression that "when the returns were filed, the taxes had to be paid." (R. 25). Petitioner had previously admitted to the Treasury agents, at the time of his first meeting with them, that he knew he could have filed returns without remittances (R. 5-6).

The trial court found as facts, *inter alia*, the following (R. 33, 34):

> The failure to file the return for both years was voluntary, purposeful, deliberate and intentional, and not accidental, inadvertent or negligent.
>
> I find that the defendant knew that the returns ought to have been filed and that he deliberately failed to file them so that the Government would not know the extent of his income and of his tax liability.
>
> I find as a fact that the defendant knew that he had to file a return whether or not he paid the tax, and he knew that he could and should pay the estimated tax quarterly in advance. * * *

ARGUMENT

1. Petitioner's first contention is that he was deprived of due process of law by the cancellation of a conference in the Intelligence Division of the Internal Revenue Service (Pet. 17-19, 29-37). This argument, which was not raised in either court below, is frivolous. Not only is there no requirement of due process that a conference be granted prior to prosecution, but on the facts no such issue is presented here. Near the conclusion of the Treasury agents' investigation, during which petitioner met with them on a number of occasions (R. 5-6), petitioner was invited to a conference in the Intelligence Division Office at Baltimore scheduled for June 11, 1956, at which he could present "any facts or evidence which you wish to have considered * * *" (R. 50-51). Petitioner testified that he

asked for a postponement and the agent "sort of agreed tentatively on June 18th" (R. 17), though petitioner had admitted to the agent that "I wouldn't know what I could do by way of additional evidence because * * * I thought I had said everything that I had to say." (R. 29). The next day the agent advised petitioner that the Baltimore conference was deemed to be unnecessary and that the case would be referred to the Regional Counsel at Philadelphia, where petitioner could have a conference. (R. 18.) Petitioner concedes that he did have such a conference (R. 18, 51-52), and does not venture to suggest what he could have said in Baltimore that might conceivably have altered the decision to forward the case for prosecution.

2. Petitioner's second contention (Pet. 20-29, 38-41) is in essence that the evidence was insufficient to prove that his failure to file returns was willful. He argues that there was no showing of "evil motive" (Pet. 40-41), citing *United States* v. *Murdock*, 290 U. S. 389 and *Spies* v. *United States*, 317 U. S. 492. As already noted, however, the trial court found as a fact that the petitioner had "deliberately failed to file [the returns] so that the Government would not know the extent of his income and of his tax liability", and the evidence amply supported that conclusion. (*Supra*, p. 5.) Not only was the trier of the facts not bound to accept petitioner's explanation that he had thought he could not file the returns without remitting the amount of tax due, but that very testimony was in direct conflict with petitioner's admission to the Treasury agents during the investi-

gation. (R. 5-6.) And there is plainly no merit in the argument (Pet. 20-22, 40) that in a prosecution for willful failure to file a return the Government must prove a willful attempt to evade the tax. *Spies* v. *United States*, 317 U.S. 492, 498-499.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

JOSEPH F. GOETTEN,
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Attorneys.

January, 1958.

Petitioner also lists among his "Questions Presented" (Pet. 1), although he does not argue it, the point that the special agent's signing of the complaint on which the information was predicated was a deprivation of due process because the investigation had not been completed at that time. Not only was this point not raised in either court below but it also rests on a false factual basis. The investigation was complete by August, 1956 (R. 51-52); the agent's complaint was signed at the time the information was filed in November, 1956 (*supra*, p. 3.)